

1 NELSON E. ROTH, SBN 67350
ner3@cornell.edu
2 CORNELL UNIVERSITY
300 CCC Building
3 Garden Avenue
Ithaca, New York 14853-2601
4 Telephone: (607)255-5124
Facsimile: (607)255-2794

BERT H. DEIXLER, SBN 70614
bdeixler@proskauer.com

CHARLES S. SIMS, New York Attorney Registration No. 1535640
admitted *pro hac vice*
csims@proskauer.com

8 CLIFFORD S. DAVIDSON, SBN 246119
cdavidson@proskauer.com

9 PROSKAUER ROSE LLP

2049 Century Park East, 32nd Floor

10 | Los Angeles, CA 90067-3206

Telephone: (310) 557-2900

11 | Facsimile: (310) 557-2193

12 | Page

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

KEVIN VANGINDEREN

Plaintiff,

V.

CORNELL UNIVERSITY.

Defendant.

) Case No. 07-CV-2045-BTM (JMA)

} Hon. Barry T. Moskowitz

DECLARATION OF SIMEON F.
MOSS IN SUPPORT OF
CORNELL'S REPLY IN FURTHER
SUPPORT OF SPECIAL MOTION
TO STRIKE PLAINTIFF'S
COMPLAINT PURSUANT TO
SECTION 425.16 OF THE
CALIFORNIA CODE OF CIVIL
PROCEDURE

[Per chambers, no oral argument unless requested by the Court]

Hearing Date: December 21, 2007
Time: 11:00 a.m.
Place: Courtroom 15

Action Filed: October 1, 2007

DECLARATION OF SIMEON F. MOSS

1 I, Simeon F. Moss, declare as follows:

2 1. I am the Director of the Press Relations Office at Cornell University in
3 Ithaca, New York, and I have held this position since 2004. Prior to this position,
4 from 1995-2004, I was the Editor of the *Cornell Chronicle*, a weekly newspaper
5 published by the University to keep its faculty, staff and students apprised of news
6 relating to the Cornell community.

7 2. I submit this declaration in support of Cornell's Reply in Further
8 Support of Special Motion to Strike Plaintiff's Complaint. Unless otherwise
9 indicated, I have personal knowledge of the facts set forth herein through my
10 positions at Cornell. If called as a witness, I could and would testify competently to
11 the following.

12 3. I have researched the publication and distribution of the *Cornell*
13 *Chronicle* in 1983 by reviewing bound volumes archived at the *Chronicle*'s office,
14 interviewing former and present *Chronicle* staff members, and consulting staff
15 members of the *Ithaca Journal*, the city's newspaper which was responsible for
16 printing and distributing the *Chronicle* in 1983. In my position as Director of Press
17 Relations I work closely with the current *Chronicle* staff, and as past editor of the
18 *Chronicle* I am aware that the *Chronicle* has compiled, and does continuously
19 compile in the course of regularly conducted business, bound volumes of all
20 published issues of the *Chronicle* for archival reference.

21 4. The bound volumes reveal that from 1982 to 1983, the *Cornell*
22 *Chronicle* was published once a week during the academic year, and once a month
23 in June and August. There were 35 issues published between August 1982 and July
24 1983. The following year, there were 45 issues published, including weekly issues
25 during the summer session in July.

26 5. The *Cornell Chronicle*, for at least the past 25 years, has been available
27 free of charge to faculty, staff and students. Subscriptions are available by mail to

1 those who wish to order direct delivery for a small fee. See page 11 of Exhibit B
 2 attached to Cornell's Request for Judicial Notice In Support of Special Motion to
 3 Strike Plaintiff's Complaint for distribution information relating to the March 17,
 4 1983 edition of the *Cornell Chronicle*.

5 6. My investigation further reveals that no fewer than 10,000 copies were
 6 printed and distributed each week the newspaper was published during the 1982 –
 7 1983 school year. The newspaper was widely distributed across campus, including
 8 at the various dining halls, the campus store, and key academic and administrative
 9 buildings. The *Cornell Chronicle* was available at any of these locations from the
 10 day of publication until the next week's newspapers were distributed.

11 7. The Barton Blotter section of the *Cornell Chronicle* routinely listed
 12 campus crimes reported during the previous week by the Cornell University Police.
 13 My review of the bound copies of the *Chronicle* revealed that between August 1982
 14 and July 1983, the Blotter appeared in 25 of the 35 issues published during that
 15 period.

16 8. As noted in the Web page attached as Exhibit 1 to Plaintiff's Affidavit
 17 submitted in opposition to Cornell's motion to strike:

18 Chronicle publications cover the university's seven
 19 colleges; the four graduate professional schools; Cornell's
 20 New York City campuses; the New York State
 21 Agricultural Experiment Station in Geneva, N.Y.; Arecibo
 Observatory in Puerto Rico; Shoals Marine Laboratory on
 Appledore Island in the Gulf of Maine; and Weill Cornell
 Medical College in Qatar.

22 Exhibit 1 goes on to describe the *Chronicle* as it existed when Exhibit 1 was
 23 printed, which appears to have been on October 13, 2007:

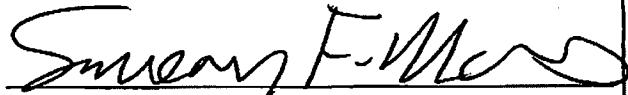
24 The Chronicle staff includes six news writers, a newspaper
 25 editor, a senior editor, a Web editor, a graphic designer,
 26 administrative staff and usually a few student interns.
 27 Writers report on Cornell research and events in science,
 28 technology, the humanities, the arts and the social
 sciences. They also write news and features on faculty,
 administrators and students. Regular columns cover new
 books, innovations, New York City campus events and the

1 university's land-grant mission. A weekly calendar
2 highlights upcoming events.

2 Based upon my review of the bound volumes of the *Chronicle*, my experience as a
3 former editor of the *Chronicle*, and my interviews with current and former
4 *Chronicle* staff members, I believe that in 1983, the mission of the *Cornell*
5 *Chronicle* was the same as described above and in Exhibit 1.

6 9. Contrary to Plaintiff's assertion, Cornell has not disseminated any press
7 releases regarding this litigation. I know this because, as Director of the Cornell
8 Press Relations Office, I would authorize and review any such releases before they
9 were disseminated. I have not authorized or reviewed any press releases regarding
10 this litigation, nor have I seen any such releases in any publication controlled by
11 Cornell.

12 I declare under penalty of perjury under the laws of the State of New York
13 and the United States of America that the foregoing is true and correct and that this
14 declaration was executed this 13th day of December, 2007, at Ithaca, New York.

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Simeon F. Moss

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